LAI KIM LOI

v.

DATUK LAI FOOK KIM & CO.

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
MOHD. YUSOFF MOHAMED SCJ
GUNN CHIT TUAN SCJ
[CIVIL APPEAL NO. 282 OF 1987]
5 MAY 1989

COMPANY LAW: *Procedure in cases of claims of oppression - Striking off winding up petition - Duplication of actions - Difference between winding up under ss. 181, 218 - Advertisement of petitions.*

The 2nd respondent is a private limited company incorporated under the Companies Act 1965 ("the Act") and both the appellant and the 1st respondent were shareholders of the same. The appellant complained that the 1st respondent had failed to allot to the appellant a certain number of shares in the 2nd respondent company (after having allotted to himself the same number of shares) and other alleged acts of oppression.

Accordingly the appellant had filed a winding up petition against the 2nd respondent under s. 181 of the Act and *inter alia* sought allotment of new shares to him or to set aside the allotment of shares to the 1st respondent and for the winding up of the 2nd respondent under ss. 181 or 218.

At the same time the appellant also filed a civil suit against the 1st respondent claiming substantially the same relief (in so far as the shares are concerned) and alleging the same substantial facts.

The civil suit has been set down for trial. In the meantime the appellant had also advertised the winding up petition pursuant to the Winding Up Rules. The respondents applied to strike out the petition on the grounds:

(a) that the petition was wrong in form as the appellant was claiming oppression; and

(b) that there was a multiplicity of proceedings in light of the civil action.

The Judge struck off the petition on the ground that the petition was wrong in form as it attempted to roll up a petition under s. 218 with a petition under s. 181. The appellant appealed.

Held:

[1] A petitioner seeking remedy in the case of oppression may apply to the Court under s. 181.

[2] In the event either one of the grounds stated in s. 181(1) is established, the Court may make any one of the orders stated in s. 181(2) which includes a winding up order. The petitioner therefore need not pray for this as an alternative prayer.

[3] Relief under s. 181 must be brought by way of petition and after presentation of the same the petitioner must take out a summons for directions under O. 88 r. 7 of the Rules of the High Court and the Court may at this juncture order that advertisement of the petition be published.

[4] A petition under s. 181 cannot be published without the prior order of the Court.

[5] The Companies (Winding Up) Rules 1972 applies in cases of petitions under s. 218 and the petitioner may proceed to advertise without prior order.

[6] The petition here is not in accordance with the provisions of the Companies Act. The same is imprecise and appears to be a hybrid petition purporting to have been presented under two different sections of the Companies Act.

[7] The issues raised and the relief sought have been largely duplicated, substantial duplication of issues and relief sought in both actions amounts to multiplicity of actions. The petition is therefore vexatious and is an abuse of the process of the Court and ought to be struck out.

[Appeal dismissed with costs.]

Cases referred to:
Re Westbourne Galleries Ltd. [1970] 3 All ER 370
Re Lundie Brothers Ltd. [1965] 2 All ER 692
Ebrahimi v. Westbourne Galleries Ltd. & Ors. [1972] 2 All ER 492
Re Great Eastern Hotel (Pte) Ltd. [1989] 1 MLJ 161
Royal Bank of Scotland v. Citrusdal Ltd. [1971] 1 WLR 1469
Lesco Development Corporation Sdn. Bhd. v. Malaysia Building Society Bhd. [1987] CLJ (Rep) 160
In re Garage Door Associates Ltd. [1984] 1 WLR 35
Re Kong Thai Sawmill (Miri) Sdn. Bhd. [1978] 2 MLJ 227
Re Richard Pitt & Sons Pty Ltd. [1978-1980] 4 ACLR U59 462

Legislation referred to:
Companies Act 1965, ss. 181, (1)(a), 218, (1)(b)
Companies (Winding Up) Rules 1972, rr. 8, 24, 32
Rules of the High Court 1980, O. 9, O. 88 rr. 5, 7

Other sources referred to:
Halsbury's Laws of England 4th Edn., Vol. 37, para. 446

For the appellant - Lim Kean Chye (Yap Pak Vui with him); M/s. Yap & Chin
For the respondent - Sri Ram (M/s. Clement Skinner with him;) M/s. Skinner Lind Robertson Willie Wong & Chin

JUDGMENT

Gunn Chit Tuan SCJ:

Lai Kim Loi (the petitioner) presented a petition in the High Court in Borneo at Sandakan on 14 August 1985. The petition was intituled Companies Winding-Up No. 6 of 1985 and stated that Lai Fook Kim Estates Sendirian Berhad (the company) was incorporated under the Companies Act 1965 on 30 December 1971. The nominal capital of the company is RM10,000,000 divided into 10,000,000 ordinary shares of RM1 each. The amount of the capital paid up or credited as paid up is RM1,000,000. The company was set up by the petitioner and his elder brother Datuk Lai Fook Kim (the first respondent) and both of them were subscribers with one share each in the company. The petitioner and the first respondent owned oil palm estates adjoining each other and in the year 1972 the company built an oil palm mill on the petitioner's land which was managed by him. In 1980 the first respondent proposed that he be allotted 999,998 shares of RM1 each in the company. The petitioner agreed and the first respondent was allotted the shares at a directors' meeting on 26 February 1980. According to the petitioner he was also to be allotted the same number of shares. But

finally on or about 19 April 1985, the first respondent was alleged to have refused to honour their agreement. Amongst other instances of acts of alleged oppression to the petitioner it was stated that the first respondent and his son Lai Keat Yeong purported to hold a directors' meeting on 22 February 1983, without notice to the petitioner and caused the company to guarantee a loan of RM5 million borrowed by Sabah Hotel Sdn. Bhd. which is controlled by the first respondent, from another company. The said Lai Keat Yeong was appointed a director of the company in the year 1976.

It was also alleged that on 9 April 1985, the first respondent called a directors' meeting and passed resolutions to alter Articles 70 and 76 of the company. The effect of the alteration of the articles was that the founder directors were no longer permanent directors . It was at that meeting that the petitioner made a formal request that 999,998 shares be allotted to him but that request was rejected. There were other acts by the first respondent recited in the said petition which the petitioner alleged showed oppressive conduct under s. 181 of the Companies Act 1965, and the petitioner prayed for the following orders:

(i) that steps be taken by the company and its directors to be caused to issue to the petitioner shares equal in numbers to those issued to the said Fook Kim, alternatively that the said Fook Kim be ordered to transfer half his shareholdings to the petitioner.

(ii) alternatively that the allotment of 999,998 shares and 1 share to Lai Fook Kim and Keat Yeong respectively be set aside.

(iii) that the Court may order that steps be taken to restore Articles 70 and 76 of the articles of association to their original form.

(iv) that Lai Fook Kim Estate Sendirian Berhad may be wound up by the Court under s. 181 or 218 of the Companies Act 1965.

(v) or that such other order may be made in the premises as shall be just.

On 15 August 1985, the petitioner also filed a writ of summons and a statement of claim against the first respondent in which substantially the same facts were averred as those stated in the said petition, and in the statement of claim the petitioner prayed for the following orders:

(1) a declaration that the plaintiff is entitled to 999,998 shares in the said company.

(2) alternatively that the plaintiff is entitled to half the issued capital of the said company.

(3) an order that the defendant call a board meeting and take all steps as are necessary to issue the plaintiff with 999,998 shares in the said company.

(4) alternatively an order that the defendant transfers such of his shareholding in the said company as will give the plaintiff an equal half share holding in the said company;

(5) Costs; and

(6) such other order as shall be just.

It was therefore not unexpected that on 13 November 1986, the first respondent filed a notice of motion to move the Court for an order that the petition dated 14 August 1985, presented by the petitioner be struck out or alternatively that all proceedings relating to the petition be stayed on the grounds that the petition is frivolous, vexatious and an abuse of the process of the Court.

The said notice of motion was supported by an affidavit of the first respondent affirmed on 9 November 1986, in which he stated that the petitioner had commenced legal proceedings against him in a suit filed in the High Court in Borneo at Sandakan numbered S 235 of 1985.

After service of the writ of summons he entered an appearance to the said suit and had filed a defence thereto. The petitioner had proceeded with the said suit and on 10 June 1986 applied for and obtained an order for directions. Pursuant to that order the petitioner and the first respondent had exchanged a list of documents. According to the first respondent the reliefs sought by the petitioner in the said suit are substantially similar to those claimed in the said petition. He also observed from the said petition that the petitioner had held on to service of the petition for more than a year since its presentation. The first respondent complained that the matters raised in the petition do not concern the solvency of the company or any creditors, but the petitioner had seen fit to advertise twice in newspapers circulating in Sabah the presentation of the said petition. Since publication of the said petition both he and the company have been embarrassed by various enquiries concerning the business of the said company. Finally, the first respondent complained that the petition as presented was bad in law because it was presented under the wrong part of the Companies Act 1965, was not in proper form and was not in compliance with the relevant rules of the High Court. In the premises he prayed for an order in terms of the said notice of motion.

After hearing arguments on 19 and 20 May 1987, the learned Judge reserved judgment to a date to be fixed, and in a written judgment delivered on 15 June 1987, he dealt with the arguments raised by Counsel for both parties. The learned Judge considered that "a petition under s. 218 of the Companies Act could not be rolled up with a petition under s. 181 of the Companies Act". He also considered that the petition in this case had not been properly presented and was defective in form and that a wrong procedure had been adopted in its presentation. The learned Judge came to the conclusion that the petition was frivolous and vexatious and was an abuse of the process of the Court and therefore made an order that it be struck out with costs to be taxed.

Before us Mr. Lim Kean Chye, leading Counsel for the petitioner, contended that the first respondent should have given the grounds for his application by notice of motion to strike out the petition. He also contended that non-compliance with the Rules of the High Court or the Companies Winding Up Rules was a mere irregularity and not a nullity. On the first respondent's objections to the petition, Mr. Lim stated that it was difficult to understand them as s. 181 of the Companies Act merely provides that any member of the company may "apply" to the Court for an order under that section in cases of oppression and O. 88 r. 5 of the Rules of the High Court merely states that certain applications under the Companies Act such as one under s. 181 of the said Act for relief in cases of oppression must be made by petition. Counsel stated that even O. 9 of the Rules of the High Court which contains general provisions relating to petitions by which civil proceedings in the High Court are begun only speaks of "petitions of a particular class" being subject to special provisions relating to petitions of that class made by the Rules of the High Court or by or under any written law. He stated that the relief which the petitioner was seeking other than winding up was an alternative remedy as provided for in s. 181 of the Companies Act. He therefore contended that O. 88 of the Rules of the High Court only applied when a petitioner pursued the alternative remedy and did not want a winding up.

Mr. Lim then stated that the petition in question combined reliefs under ss. 181 and 218 of the Companies Act because both have winding up as a relief on just and equitable grounds as pointed out by Plowman J in *Re Westbourne Galleries Ltd.* [1970] 3 All ER 370 at 380. He submitted that the same facts would justify the granting of relief and therefore one set of proceedings should be sufficient and it was up to the Court to grant relief under the appropriate section of the Act or the Court might say that the facts fell within both sections

or that it fell within one section and not the other. He contended that if the Judge was right, a petitioner would then be forced to present two petitions, one under each section, and the very mischief of multiplicity would have been achieved. Counsel complained that the learned Judge seemed to have been influenced by the arguments of the other side that the two sections are diametrically opposed. He contended that that argument was without foundation because a winding up order could be obtained under s. 181 as well as under s. 218 of the Companies Act 1965.

It was then contended by Mr. Lim that the procedure adopted was normal. He referred to several cases including *Re Lundie Brothers Ltd.* [1965] 2 All ER 692 and pointed out that in that case the petition presented was for relief under s. 210 of the UK Companies Act 1948 and alternatively for a winding up order under s. 222 of that Act. Reference was also made to *Ebrahimi v. Westbourne Galleries Ltd. & Ors.* [1972] 2 All ER 492 where the appellant petitioned for an order under s. 210 of the UK Companies Act 1948 and in the alternative for an order under s. 222 of that Act. Finally, on this point Counsel referred to the recent case of *Re Great Eastern Hotel (Pte) Ltd.* [1989] 1 MLJ 161 which involved a winding up petition in the High Court in the Republic of Singapore and pointed out that there a petition could be brought under ss. 251 and 254 of the Singapore Companies Act (Cap. 185, 1970 Ed), and the petitioner also sought alternatively for a winding up order under s. 216 of that Act.

On the question of multiplicity Counsel for the petitioner agreed that the issues raised in the statement of claim in Suit No. S 235 of 1985 are largely duplicated in paras. 11,13 and 20 of the said petition and the relief sought in the suit is largely duplicated in para. (i) of the prayer for relief in the said petition. But he contended that in addition to those issues, the petition also raises further issues which are properly brought in a petition under s. 181 and/or s. 218. He stated that those issues could not be raised in the suit and if established in favour of the petitioner would justify the making of orders sought in the said paras. (ii), (iii) and (iv) of the prayers in the said petition. He contended that the learned Judge was therefore wrong in stating that it is common ground that the prayers in the said suit and the reliefs in the petition, except that praying for winding up, are substantially the same. Counsel then referred to the following passage in para. 446 of Vol. 37 of *Halsbury's Laws of England* (4th Edn.):

> If there are two Courts faced with substantially the same question or issue, that question or issue should be determined in only one of those Courts, and the Court will if necessary stay one of the actions.

He continued his submission by referring to *Royal Bank of Scotland v. Citrusdal Ltd.* [1971] 1 WLR 1469 and pointed out that in that case there was a summons by the defendants in a pending action that the action should be struck out, or alternatively stayed on the grounds that the proceedings "are vexatious and an abuse of the process of the Court in that they substantially duplicate an action already commenced between the same parties ... relating to the same subject matter and in which substantially the same issues called for determination". In that case Plowman J stayed the originating summons in the High Court but directed that the County Court proceedings were to be transferred to the High Court and be put in the same list to come on immediately after and be heard by the same Judge as the originating summons. Mr. Lim therefore submitted that if the plaintiffs have commenced two actions claiming substantially the same relief in respect of the same issue, one of the actions could be stayed even if they are in the same Court. He contended that the learned Judge in this case could have stayed the notice of motion and ordered the suit to be heard together with the petition. But Mr. Lim also pointed out that if a plaintiff sought relief in one of the actions

which he could not seek in the other action, neither action would be stayed. He contended that the reliefs sought in both actions in this case were not similar and referred to *Lesco Development Corporation Sdn. Bhd. v. Malaysia Buildling Society Bhd.* [1987] CLJ (Rep) 160 in which this Court held that it was undesirable to allow a situation where two different Courts would try and determine the same issues arising between the same parties relating to the same subject matter but even then the Court in that case had ordered that the hearing of the originating summons in the Family and Property Division be postponed until the final disposal of the suit in the Commercial Division of the High Court. Counsel contended that in this case, apart from the relief claimed in para. (i) of the prayer in the petition, the orders sought by the petitioner could not have been sought in the suit and were properly the subject of a petition under the Companies Act. He contended that there could be no real difficulty in the petition and the suit being heard concurrently or consecutively by the same Judge.

Finally, Mr. Lim referred to *In re Garage Door Associates Ltd.* [1984] 1 WLR 35 in which a petitioner, who was the registered shareholder of one share and had been a director but had resigned, presented a petition for the winding up of the company alleging, *inter alia*, that the company was a joint venture between B and himself and that they had fallen out. Further, he complained of the issue of 799 shares, 499 of which were shown on the register of members to have been allotted to B and 300 to his wife. The petitioner sought a winding up order and alternatively an order under s. 75 of the UK Companies Act 1980 (the equivalent of s. 181 of our Companies Act) setting aside the allotment of 799 shares and that B and his wife should buy the petitioner's share at a price to be determined in the manner specified in the petition. On B and his wife, by motion, seeking an order striking out, as an abuse of the process of the Court, the part of the petition relating to winding up of the company, it was held by Mervyn Davies J in the Chancery Division dismissing the motion, that being a contributory the petitioner had a *locus standi* to present a petition; that, although the petition sought a winding up order, it was also a petition seeking relief under s. 75 of the Companies Act 1980; that, in those circumstances, the petition should proceed and the question of the ownership of the shares should be determined and, thereafter, if appropriate, the petitioner could prosecute the winding up application. Mr. Lim therefore submitted that it was inconvenient to have two sets of proceedings and sometimes only one action was better.

At that stage of the submission by Mr. Lim, we decided to call upon Mr. Sri Ram, leading Counsel for the respondents, to address us. He referred to the title of the said petition and stated that it was a petition under s. 218 of the Companies Act and not under s. 181 of the said Act because it was the intention of the petitioner to advertise the said petition to embarrass the respondents. He referred to an affidavit of Yap Pak Vui, a partner of Messrs. Yap & Chin, solicitors for the petitioner, affirmed on 17 November 1986, wherein he had affirmed that the petition had been duly gazetted and advertised and the provisions of the Companies (Winding Up) Rules had been duly complied with. Counsel then referred to rr. 8, 24 and 32 of the Companies (Winding Up) Rules 1972 relating to the title of proceedings, advertisement of petition and attendance on the Registrar respectively. He also referred to O. 88 r. 5 of the Rules of the High Court 1980 and pointed out that for a s. 181 petition one must take out a summons for directions under r. 7 of O. 88 when the Court may by an order give such directions as to the proceedings to be taken before the hearing of the petition, including in particular directions for publication of notice of the petition.

Counsel also referred to the following passage in the judgment of the Privy Council in *Re Kong Thai Sawmill (Miri) Sdn. Bhd.* [1978] 2 MLJ 227, 228 on s. 181 of our Companies Act 1965:

This section can trace its descent from s. 210 of the United Kingdom Companies Act 1948 which was introduced in that year in order to strengthen the position of minority shareholders in limited companies. It also resembles the rather wider s. 186 of the Australian Companies Act 1951. But s. 181 is in important respects different from both its predecessors and is notably wider in scope than the United Kingdom section. In sub-section (1)(a) it adds disregard of the interests of members, etc. to oppression as a ground for relief in this respect making explicit what was already inherent in the section (see *In re H.R. Harmer Ltd*). It introduces a new ground in sub-section (1)(b) and, most importantly, in sub-section (2), which sets out the kinds of relief which may be granted, it provides for "remedying the matters complained of" and states as a specific type of relief that of winding-up of the company.

Section 210 is differently constructed. Under it, the Court is required to find that the facts would justify the making of a winding-up order under the "just and equitable" provision in the Act, but also that to wind-up the company would unfairly prejudice the "oppressed" minority. The Malaysian section, on the other hand, requires (under sub-section 1(a) a finding of "oppression" or "disregard", and then leaves to the Court a wide discretion as to the relief which it may grant, including among the options that of winding the company up. That option ranks equally with the others, so that it is incorrect to say that the primary remedy is winding-up. That may have been so before 1948 and even after the enactment of s. 210, but is not the case under s. 181.

Their Lordships consider it important that Courts applying s. 181 should do so according to its terms and its purpose and should not regard themselves as necessarily bound by United Kingdom decisions, which are based upon a different section, and in some cases restrictive. The same applies, though with less force, to reliance upon Australian decisions upon s. 186.

Then Mr. Sri Ram referred to the statement of claim filed in Civil Suit No. S 235 of 1985 which was signed on 14 August 1985, i.e. the very same day on which the petitioner signed the said petition and pointed out that prayer (1) in the statement of claim claiming for 999,998 shares and another claim for half the issued share capital of the company in the statement of claim were also in prayer (i) of the petition. He contended that the suit filed was asking for essentially the very same relief as in the petition. The suit was duly proceeded with but the petition was not served until a year later. It was submitted that the petition was therefore vexatious. Counsel also pointed out that the petitioner was a shareholder of the company merely because he had subscribed to its memorandum and articles and that his interest in the company was purely nominal and that he could not on the basis of holding only one share be allowed to interfere in the running of the company. He stated that the real issue was whether the petitioner was entitled to 999,998 shares which is the very question raised in both the petition and the said suit. There was therefore no point in the petition hanging over the company's head until that question was decided in the suit which was already far advanced as directions had been applied for and given by the Court, documents had been exchanged and the suit was ready for trial. As opposed to that there was this vague and imprecise petition for which there had been no application for directions. Counsel submitted that the petitioner was vexatious in bringing two sets of proceedings raising the same issue and asking for the same relief which was a waste of judicial time and also submitted that the learned Judge was right in striking out the petition. Counsel then pointed out that if the petitioner lost the suit, that would be the end of the matter. If he won, then he would get substantially what he wanted and the other issues would have to be settled by the first respondent. If not, then he could present a proper petition in the proper form and using the proper procedure. Counsel suggested that the suit and the petition in the case could have been brought together in a petition under s. 181 of the Companies Act, and submitted that the present petition was therefore vexatious.

Mr. Sri Ram also pointed out that s. 210 of the UK Companies Act 1984, was replaced by s. 75 of the UK Companies Act 1980, which was in turn replaced by s. 459 of the UK Companies Act 1985. He pointed out that O. 102 of the UK Rules of the Supreme Court (similar to O. 88 of our Rules of the High Court) did not apply to s. 210 of the UK Companies Act 1948, or to s. 75 of the UK Companies Act 1980, and stated that British companies legislation was different from ours. Counsel submitted that there was an abuse of the process of Court in this case and pointed out that the petition was bad and lacking in particulars. He then referred to *Re Richard Pitt & Sons Pty Ltd.* [1978-1980] 4 ACLR 459, 462 & 478 and pointed out that in Australia the Courts have struck out bad petitions. In that Australian case the petition was woefully lacking in particulars as in this case in which the learned trial Judge had given reasons for his decision to strike out the petition. He contended that the Supreme Court should not interfere with the discretion of the learned trial Judge and should uphold his decision.

In reply Mr. Lim pointed out that there should be no striking out except in plain and obvious cases. He also said that amendments of pleadings were generally allowed if they are defective, and stated that amendments of pleadings have been allowed by the Court of Appeal in England and the proper course in this case was therefore not to strike out the petition.

We are not familiar with the companies legislation and the rules governing Court procedure in other Commonwealth countries such as the United Kingdom, Australia and Singapore. We can only observe from the cases cited by Mr. Lim that in those countries a petitioner seeking relief under the relevant section of their Companies Act in cases of oppression could also pray for, in the alternative, a winding up order under another section of their Companies Act. However, a petitioner in this country who is seeking remedy in our Courts in a case of oppression may apply for an order under s. 181 of our Companies Act 1965, which is as follows:

> 181. (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground:
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
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> (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).
>
> (2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such orders as it thinks fit and without prejudice to the generality of the foregoing the order may:
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> (a) direct or prohibit any act or cancel or vary any transaction or resolution;
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> (b) regulate the conduct of the affairs of the company in future;
>
> (c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
>
> (d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(e) provide that the company be wound up.

If, on such an application the Court is of the opinion that either one of the grounds referred to in sub-section (1) of s. 181 of the Act is established, the Court may, with the view to bringing to an end or remedying the matter complained of, make one of the orders specified in sub-section (2) of s. 181 of the Act including, as pointed out be the Privy Council in the *Re Kong Thai Sawmill (Miri) Sdn. Bhd.* case, an order to provide that the company be wound up. A petitioner applying under s. 181 of our Companies Act 1965, therefore need not pray for, in the alternative, a winding up order as a Court in this country is in any case empowered to do so if it thinks fit to make such an order.

As for the procedure, it is provided in O. 88 r. 5 of our Rules of the High Court 1980, that certain applications under the Companies Act 1965, including an application under s. 181 of the said Act for relief in cases of oppression, must be by petition. After presentation of the petition, the petitioner must take out a summons for directions under r. 7 of O. 88. On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices. In other words, a petition under s. 181 of the said Act cannot be published without the prior order of the Court, as was done in this case.

On the other hand, an order for a company to be wound up on a petition under s. 217 of the Companies Act 1965, may only be made by a Court if one of the circumstances specified in the following s. 218(1) of the Companies Act has been proved:

218. (1) The Court may order the winding up if:

(a) the company has by special resolution resolved that it would be wound up by the Court;

(b) default is made by the company in lodging the statutory report or in holding the statutory meeting;

(c) the company did not commence business within a year from its incorporation or suspends its business a whole year;

(d) the number of members is reduced in the case of a company (other than a company the whole of the issued shares in which are held by a holding company) below two;

(e) the company is unable to pay its debts;

(f) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which appears to be unfair or unjust to other members;

(g) an inspector appointed under Part IX has reported that he is of opinion:

(i) that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;

(h) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved;

(i) the Court is of opinion that it is just and equitable that the company be wound up;

(j) the company has held a licence under the Banking Act 1973 or the Islamic Banking Act 1983, and that licence has been revoked or has expired and has not been renewed; or Act 102 [Am. Act 276]

(k) the company has carried on banking business in Malaysia in contravention of s. 3, 5 or 6 of the Banking Act 1973.

In such a case the Rules of the High Court 1980, do not apply. The Companies (Winding Up) Rules 1972, apply and as for the title of proceedings it is provided in the following r. 8 thereof that:

8. (1) Every proceeding in a winding-up matter shall be dated and shall, with any necessary additions, be intituled as follows:

In the High Court in ... at

...

Companies (Winding-Up) No

... of ...

In the matter of the Companies Act 1965

And

In the matter of ...

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

In the present case it is to be observed that the petition was in fact assigned a distinctive number by the Registrar of the Court i.e. Companies Winding-Up no. 6 of 1985 and the petitioner has proceeded to advertise the petition in accordance with r. 24 of the Companies (Winding Up) Rules 1972, which does not require the prior order of the Court.

After consideration of the relevant provisions of our law, it could not be said that this was a case of mere non-compliance with the rules of the Court which requires only amendment of the pleadings. In this case the petition presented was not in accordance with the provisions of the Companies Act 1965 itself, resulting in a petition which was, we would agree with Counsel for the respondents, imprecise and which appears to us to be a hybrid petition purporting to have been presented under two different sections of the Companies Act 1965.

On the question of multiplicity, Mr. Lim has conceded that the issues raised and the relief sought in Suit No. S 235 of 1985 have been largely duplicated in the said petition. Although the issues raised and the relief sought are not totally similar yet we consider that the substantial duplication of issues and relief sought in both actions amounted to multiplicity of actions and in all the circumstances of this case, the petition presented is vexatious and is an abuse of the process of the Court and ought to be struck out as the learned Judge has done and not stayed or the petition be allowed to be amended as suggested by Counsel for the petitioner. We were satisfied that the learned Judge had exercised his discretion correctly in striking out the petition and we therefore dismissed the appeal with costs. The deposit is to be paid to the respondents to the account of taxed costs. But to be fair and to ensure that the doors of justice are still open to him, we would add a further order to that made by the High Court that the petitioner be at liberty to file a proper petition under s. 181 of the Companies Act 1965, after disposal of Suit No. S 235 of 1985 if he still requires to seek remedy for acts which he alleged to be oppressive to him.

Also found at [1989] 2 CLJ 107